



U.S. Department of Justice

Immigration and Naturalization Service

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: WAC-99-220-51008 Office: California Service Center

Date: **JAN 09 2002**

IN RE: Petitioner:
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C)

IN BEHALF OF PETITIONER:

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. 1153(b)(4), in order to employ her as a "Bible woman" at a wage of \$11.00 per hour.

The director denied the petition finding that the petitioner failed to establish that the proposed position was a "bona fide full-time paid religious worker position."

On appeal, counsel for the petitioner argued, in part, that the director's decision was capricious.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The petitioner in this matter is a church claiming affiliation with the Southern Baptist Convention denomination. It did not provide a description of the size of its congregation or the number of employees. The beneficiary is a native and citizen of the

Philippines who was last admitted to the United States on March 27, 1998, as a B-2 visitor. The record reflects that the beneficiary was granted a change of classification to R-1 authorized for employment with the petitioner valid from December 21, 1998 through September 21, 2001. The petitioner indicated on the petition form that the beneficiary has never been employed in the United States without authorization.

In order to establish eligibility for classification as a special immigrant religious worker, the petitioner must satisfy each of several eligibility requirements.

A petitioner must establish that it is a qualifying religious organization as defined in this type of visa petition proceeding.

8 C.F.R. 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

- (i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

- (A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations; or

- (B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3).

The petitioner must either provide verification of individual exemption from the U.S. Internal Revenue Service, proof of coverage under a group exemption granted by the IRS to the denomination, or such documentation as is required by the IRS. Such documentation to establish eligibility for exemption under section 501(c)(3) includes: a completed Form 1023, a completed Schedule A attachment, and a copy of the articles of organization showing, *inter alia*, the disposition of assets in the event of dissolution.

The petitioner in this matter asserted that it has the requisite tax exempt status, but failed to submit documentation of such status. For this reason, the petition may not be approved.

The next issue is whether the petitioner has established that the proposed position qualifies as a religious occupation for the purpose of special immigrant classification.

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in

religious hospitals or religious health care facilities, missionaries, religious translators, or religious broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

To establish eligibility for special immigrant classification, the petitioner must establish that the specific position that it is offering qualifies as a religious occupation as defined in these proceedings. The statute is silent on what constitutes a "religious occupation" and the regulation states only that it is an activity relating to a traditional religious function. The regulation does not define the term "traditional religious function" and instead provides a brief list of examples. The list reveals that not all employees of a religious organization are considered to be engaged in a religious occupation for the purpose of special immigrant classification. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed and practice of the religion. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative or secular in nature. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

The duties of the proposed position of "Bible woman" included praise leader and Sunday school teacher on Sundays for four hours, personal devotion and lesson planning on Tuesdays for eight hours, visitation on Wednesdays for eight hours, personal devotion and visitation on Thursdays for eight hours, and personal devotion and hospital calls on Fridays for eight hours.

At issue in this proceeding is whether the proposed position is traditionally a full-time salaried occupation requiring specific religious training in the petitioning church and/or in its parent religious denomination and thereby a qualifying religious occupation.

After a careful review of the record, it must be concluded that the petitioner has failed to overcome the director's objection. In churches of average size, lay positions teaching children's Sunday school classes and visiting home-bound congregants are usually filled on a part-time basis by volunteers from the congregation who

receive some basic instruction in outreach work.

In this case, there is no evidence that the petitioner has ever employed a lay religious worker as a Bible woman in its past and no explanation of its decision to do so at this time. The petitioner also failed to provide any description of the size of its congregation or the necessity to employ a lay person full-time to meet the needs of its congregation. Absent a description of the size of the congregation, the nature of the services offered, and the number of members utilizing these services, the Service cannot reasonably conclude that the proposed position is credible as a full-time permanent position.

In addition, the petitioner failed to provide any description of its recruitment process resulting in the job offer to the alien beneficiary. There is no indication that the position was advertised or that other candidates were considered. Any non-profit organization establishing a new permanent salaried staff position normally follows some formal search process approved by its board of directors and it considers multiple candidates. The pastor of an individual church is usually not authorized to simply offer permanent employment to a non-resident alien without a formal process and authorization from the governing structure of the church. Absent a description of the process whereby the petitioner created the new position and offered the position to the beneficiary, there is a question as to the credibility of the job offer.

Finally, the petitioner has not provided any documentation from an authorized official of the denomination that such lay positions are traditionally permanent salaried positions requiring some specific religious training. Merely going on record without supporting documentary evidence, is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Clearly, the claim that an individual member church in the Baptist denomination will employ a lay member in a full-time capacity for the purpose of devoting a significant percentage of her time to "personal devotion" is a highly unusual claim and it is incumbent on the petitioner to provide a reasonable explanation of its decision to create such a position.

For these reasons, it must be concluded that the petitioner has failed to overcome this issue as a ground for denial of the petition.

The petitioner also must establish that the beneficiary had had the requisite two years of continuous experience in a religious occupation.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work

continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on August 6, 1999. Therefore, the petitioner must establish that the beneficiary was continuously carrying on a religious occupation since at least August 6, 1997.

In this case, the petitioner failed to provide a comprehensive description of the beneficiary's employment history or means of financial support. Absent a detailed description of the beneficiary's employment history, supported by corroborating documentation such as tax documents, the Service is unable to conclude that the beneficiary had been engaged in any particular occupation, religious or otherwise, during the two-year qualifying period. Contrary to counsel's suggestion, simply having been approved for employment with a church is not sufficient to satisfy this provision which requires proof that the alien had been "continuously carrying on a religious occupation." For this reason as well, the petition may not be approved.

A petitioner also must demonstrate its ability to pay the proffered wage.

8 C.F.R. 204.5(g)(2) states, in pertinent part, that:

Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of annual reports, federal tax returns, or audited financial statements.

The petitioner has not furnished the church's annual reports, federal tax returns, or audited financial statements. Therefore, the petitioner has not satisfied the documentary requirement of this provision. For this reason as well, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.